

Honorable Lauren J. King

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MONET CARTER-MIXON, as Personal  
Representative of the Estate of MANUEL  
ELLIS, and MARCIA CARTER,

Plaintiffs,

vs.

CITY OF TACOMA, CHRISTOPHER  
BURBANK, MATTHEW COLLINS,  
MASYIH FORD, TIMOTHY RANKINE,  
ARMANDO FARINAS, RON  
KOMAROVSKY, PIERCE COUNTY, GARY  
SANDERS, and ANTHONY MESSINEO,

Defendants.

NO. 21-CV-05692-LK

REPORT REGARDING STATUS  
OF CRIMINAL PROCEEDINGS  
AND NEED FOR A STAY

The criminal trial in Pierce County Superior Court concluded with not guilty verdicts on all counts as to the three individual defendants (Christopher Burbank, Matthew Collins, and Timothy Rankine) on December 21, 2023. As such, that state criminal matter is concluded.

I. DEFENDANTS' POSITION

The parties have discussed the best course of action for the progression of the case but hold differing views on whether the case should be stayed pending review by the United States Attorney's Office (USAO). The individual defendants jointly believe this case should remain

1 stayed pending review and the plaintiffs believe the stay should be lifted, notwithstanding the  
2 review. The City of Tacoma takes no position.

3 The defense position is based on the plaintiffs' active involvement in advocating for the  
4 USAO to consider the possibility of filing additional criminal charges against the defendants in  
5 the state case. It is the defense understanding that the plaintiffs, perhaps with their attorneys met  
6 with the USAO and advocated for their office to review and possibly pursue additional federal  
7 criminal charges. Whether that review would go beyond the defendants in the state criminal case  
8 is unknown. Most of this understanding comes from press reports, but the USAO has confirmed  
9 that it is reviewing the matter by a press release filed on January 12, 2024.

10 Additionally, the USAO indicated to the defense that it cannot give a timeline as to when  
11 the review may be completed but did indicate that it will not languish. For the reasons stated in  
12 the previously agreed motion to stay, as well as the uncertainty as to how the USAO will proceed,  
13 the defense again believes a continuance of the stay is appropriate.

## 14 II. PLAINTIFFS' POSITION

15 Plaintiffs do not consent to a continuance of the stay, and it is their desire for discovery  
16 to resume in this case. All proceedings in this civil action have already been stayed for a full  
17 calendar year. Plaintiffs consented to the stay of proceedings in January 2023 but circumstances  
18 were far different then. At that time, Defendants Matthew Collins, Christopher Burbank, and  
19 Timothy Rankine had been formally charged in Pierce County Superior Court with murder and/or  
20 manslaughter. Trial was considered imminent. Ultimately, the Pierce County criminal trial  
21 concluded on December 21, 2023 when the jury returned not guilty verdicts. Now that the original  
22 basis for the stay has ended the Plaintiffs are anxious to proceed with this civil action.

23 Plaintiffs can only speculate as to (1) how long the DOJ's review will take, and (2)  
24  
25

whether federal charges will be brought against any Defendants. “The case for staying civil proceedings is weak when no indictment has been returned.” *SEC v. Global Express Capital Real Estate Inv. Fund*, 289 Fed. Appx. 183, 191 (9th Cir. 2008). Plaintiffs believe that continuing the stay for an indefinite time period under the present circumstances is not justified.

Regarding Fifth Amendment interests, Plaintiffs show that Matthew Collins, Timothy Rankine, and Masyih Ford all testified at the Pierce County criminal trial. Regardless, Plaintiffs freely admit that the Fifth Amendment rights of all individually named Defendants are potentially implicated by the current DOJ review. However, the mere fact that parties’ Fifth Amendment rights are implicated does not necessarily mean a stay is appropriate, as explained by the Ninth Circuit:

A defendant has no absolute right not to be forced to choose between testifying in a civil matter and asserting his Fifth Amendment privilege. Not only is it permissible to conduct a civil proceeding at the same time as a related criminal proceeding, even if that necessitates invocation of the Fifth Amendment privilege, but it is even permissible for the trier of fact to draw adverse inferences from the invocation of the Fifth Amendment in a civil proceeding. *Baxter v. Palmigiano*, 425 U.S. 308, 318, 47 L. Ed. 2d 810, 96 S. Ct. 1551 (1976).

*Keating v. Office of Thrift Supervision*, 45 F.3d 322, 326 (9th Cir. 1995).

Should the Court decide that a continuation of the Stay is not appropriate, the parties have mutually agreed to the following timeline:

Disclosure of expert testimony under FRCP 26(a)(2)	01/31/2025
Disclosure of rebuttal expert testimony under FRCP 26(a)(2)	02/28/2025
Motions related to discovery filed	03/31/2025
Discovery completed	03/31/2025
Dispositive motions and motions challenging expert witness testimony filed. Such motions must be noted for consideration later than the fourth Friday thereafter (see LCR 7(d))	05/01/2025
Settlement conference, if mediation has been requested by the parties per LCR 39.1	05/16/2025
Mediation per LCR 39.1	06/13/2025
Motions in limine filed	07/11/2025

1	Agreed LCR 16.1 Pretrial Order	08/01/2025
2	Trial briefs, proposed voir dire questions, proposed jury instructions, deposition designations, and exhibits. Counsel are confer and indicate with their submissions which exhibits are agreed to	08/22/2025
3	Pretrial conference	09/15/2025
4	Trial	October 2025

5  
6 DATED THIS 21st day of February, 2024.

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8 Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

Kathy Herbstler, hereby certifies under penalty of perjury under the laws of the State of Washington, that on the day set forth below, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record for the plaintiffs and co-defendants and hereby certify that I have mailed the document by email to defendant Burbank.

Signed at Tacoma, Washington this 21st day of February, 2024.



Kathy Herbstler

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